

Hearing:  
September 29, 1998

Paper No. 11  
BAC

THIS DISPOSITION IS NOT CITABLE AS  
PRECEDENT OF THE TTAB

JULY 26, 99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Hartford Fire Insurance Company

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Serial No. 75/190,464

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John R. Garber of Cooper & Dunham LLP for Hartford Fire  
Insurance Company

Irene Williams, Trademark Examining Attorney, Law Office  
107 (Thomas Lamone, Managing Attorney)

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Before Hanak, Quinn and Chapman, Administrative Trademark  
Judges.

Opinion by Chapman, Administrative Trademark Judge:

Hartford Fire Insurance Company has filed an  
application to register the mark shown below

for "property and casualty insurance underwriting services for commercial accounts" in International Class 36.<sup>1</sup>

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), in view of five prior registered marks owned by two different entities--(1) SPECTRUM for "arranging and administering life insurance programs for employees of corporate clients,"<sup>2</sup> (2) SPECTRUM CARE for "underwriting and administering life insurance featuring life insurance with a convalescent care rider which is sold to employees of corporate clients,"<sup>3</sup> and (3) the mark shown below

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<sup>1</sup> Application Serial No. 75/190,464, filed October 31, 1996. The application is based on claimed first use dates of August 19, 1996. The application includes a statement that "The stippling in the drawing is for the purpose of contrast and is not part of the mark."

<sup>2</sup> Registration No. 1,261,933, issued December 20, 1983, Section 8 accepted, Section 15 acknowledged. The claimed dates of first use and first use in commerce are August 1, 1981 and August 30, 1981, respectively.

<sup>3</sup> Registration No. 1,826,584, issued March 15, 1994. The term "care" is disclaimed. The claimed date of first use is December 27, 1989.

for "underwriting and administering life insurance which is sold to employees of corporate clients,"<sup>4</sup> all three owned by Lincoln National Corporation; and (4) SPECTRUM ANNUITY<sup>5</sup> and (5) the mark shown below,<sup>6</sup>

both for "providing a unique selection of variable annuity insurance contracts to independent insurance agents for reoffering to the general public," and both owned by Massachusetts Financial Services Company.

The Examining Attorney contends that applicant's mark, when used in connection with its services, so resembles all of the previously registered marks as to be likely to cause confusion, mistake or deception.

Applicant has appealed the final refusal to register. Briefs have been filed, and an oral hearing was held on September 29, 1998.

We reverse the refusal to register. In reaching this

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<sup>4</sup> Registration No. 1,826,583, issued March 15, 1994. The claimed date of first use is November 1, 1988.

<sup>5</sup> Registration No. 1,163,036, issued July 28, 1981, Section 8 accepted, Section 15 acknowledged. The term "annuity" is disclaimed. The claimed date of first use is February 13, 1979.

<sup>6</sup> Registration No. 1,163,035, issued July 28, 1981, Section 8 accepted, Section 15 acknowledged. The term "annuity" is disclaimed. The claimed date of first use is February 13, 1979.

conclusion, we have followed the guidance of the court in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

We first consider the similarity or dissimilarity of the marks in their entireties, as to appearance, sound, connotation and commercial impression. The Examining Attorney contends that all of the cited marks include the word SPECTRUM, which is the dominant feature of each of the cited registered marks; and that the Examining Attorney must give greater weight to the literal or word portions of marks. Applicant, in turn, argues that each of the cited marks is different from applicant's mark which includes a distinctive design of a rainbow; and that the term SPECTRUM is a weak mark in the insurance field, as evidenced by the seven registrations initially cited by the Examining Attorney<sup>7</sup>, which include not only the five registrations still maintained as bars to applicant's mark, but also Registration No. 1,941,326 for the mark BROAD SPECTRUM for "underwriting insurance for automobiles," owned by Midwest Mutual Insurance Company<sup>8</sup>; and Registration No. 1,576,801

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<sup>7</sup> The Examining Attorney withdrew two cited registrations following applicant's amendment to its identification of services.

<sup>8</sup> Issued December 12, 1995. The claimed date of first use is November 1, 1982.

for the mark SPECTRUMED for "health insurance underwriting services," owned by Cuna Mutual Insurance Society.<sup>9</sup>

We agree with applicant that the numerous cited registered marks would tend to suggest that the term SPECTRUM is a weak mark in the insurance field. As the Court of Custom and Patent Appeals stated in the case of *Sure-Fit Products Company v. Saltzson Drapery Company*, 254 F.2d 158, 117 USPQ 295, 297 (CCPA 1958): "Where a party chooses a weak mark, his competitors may come closer to his mark than would be the case with a strong mark without violating his rights. The essence of what we have said is that in the former case there is not the possibility of confusion that exists in the latter case." See also, *In re General Motors Corp.*, 23 USPQ2d 1465 (TTAB 1992); and *In re Starcraft Corp.*, 18 USPQ2d 1163 (TTAB 1990).

Certainly the seven registrations originally cited by the Examining Attorney do not evidence use of the marks in the marketplace, nor the public's specific understanding thereof. However, these seven registrations clearly indicate that the Patent and Trademark Office, apparently in recognition of the different types of insurance offered,

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<sup>9</sup> Issued January 9, 1990, Section 8 accepted, Section 15 acknowledged. The claimed dates of first use and first use in commerce are October 1, 1988 and October 15, 1988, respectively.

and/or in recognition that the marks were not identical, has granted registrations which include the word SPECTRUM to different companies for different types of insurance underwriting services. Inasmuch as there are several separate companies which own registrations for various "SPECTRUM" marks for different types of insurance underwriting services, specifically, health insurance, auto insurance, life insurance and annuity insurance, these marks are accorded a narrow scope of protection. See *In re J.C. Penney Company, Inc.*, 179 USPQ 184 (TTAB 1973). This factor comes down in applicant's favor.

We turn next to the similarity or the dissimilarity of the services, as described in the application and the five cited registrations, and the similarity or dissimilarity of the trade channels and purchasers. The Examining Attorney asserts that services need not be identical or even directly competitive to support a finding of likelihood of confusion; that when the cited registrants' normal fields of expansion are considered, insurance underwriters can expand to provide various types of insurance; and that the channels of trade for applicant's services are presumed to encompass the registrants'. Applicant, on the other hand, argues that the involved different types of insurance underwriting services are completely different in nature,

and are in fact limited in terms of channels of trade and classes of purchasers.

The Examining Attorney is correct that services need not be identical or even competitive to support a finding of likelihood of confusion, but it is also true that the Board must take into account the services as identified, including limitations set forth therein. See *Canadian Imperial Bank of Commerce, National Association v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987).

In this case, applicant's services are limited to property and casualty insurance for commercial (not household or individual) accounts, and the five cited registrations are each limited as well. Specifically, the cited registrants' services are limited to life insurance sold to employees of corporate clients, one including a convalescent care rider (Lincoln National Corporation); and annuity insurance contracts sold to independent insurance agents for reoffering to the general public (Massachusetts Financial Services Company). That is, each of the cited registrations, as well as the involved application, are limited not only by the specific type of insurance (e.g., life, annuity, property and casualty), but also each identification of services is further limited by reciting specific purchasers or ultimate intended users (e.g.,

employees of corporate clients, independent insurance agents for resale to the public, commercial accounts).

In determining the degree of care such purchasers would exercise, we acknowledge that the record is devoid of evidence on this point. However, it seems apparent that the prototypical consumer as specifically identified in the respective recitations of services (e.g., independent insurance agents purchasing annuity insurance contracts to be resold to the general public, life insurance offered to employees of corporate clients, and commercial entities purchasing property and casualty insurance), would probably exercise a reasonably high degree of care before making such purchases. See *Freedom Savings and Loan Association v. American Fidelity Assurance Company*, 222 USPQ 71, 74 (TTAB 1984).

The Examining Attorney argued but submitted no evidence that life insurance for employees of corporate clients, annuities sold to independent agents, and/or property and casualty insurance for commercial accounts are sold through the same channels of trade to the same purchasers. In fact, the limitations within the various identifications of services, and the existence of the numerous SPECTRUM marks owned by different companies remaining unchallenged on the register, would indicate

otherwise. These limitations underscore the differences between these involved services. Thus, the specific limitations in the involved services and the resulting separate trade channels are factors in applicant's favor. Moreover, the record is silent regarding different types of insurance emanating from the same entity under the same mark.

Based on the ex parte record before us, we find that although the six involved marks share the word SPECTRUM, that word is afforded a narrow scope of protection in the insurance field; and that the cited registrants' and applicant's respective services and channels of trade as identified are specifically separate and different. Accordingly, the Examining Attorney has not met the burden to show that consumers would be likely to be confused as to the source of the involved services.

Decision: The refusal to register under Section 2(d) is reversed.

E. W. Hanak

T. J. Quinn

B. A. Chapman  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board